court of appeals held that from this fact alone, no conclusive presumption to that effect could be drawn. If he were insane—and it was upon this hypothesis that his vote had been deducted from appellant's list—"it is as probable that he voted against as for his party affiliation; at least there is no reasonable probability that could be ascribed to his secret conduct when in such deranged condition, because of his judgment and opinions entertained when in a rational and sane state of mind." His vote was therefore improperly deducted from appellant's list.

"MEANDER LINES"—WHEN THEY SHOULD BE TAKEN AS BOUNDARIES, RATHER THAN THE WATER LINE.—In *Security Land & Exploration Co.* v. *Burns* (Minn. 1902), 91 N. W. 304, the plaintiff in ejectment sought to recover a large amount of heavily timbered land lying between its fractional lot and a lake, claiming that, as successor in title to earlier patentees, its lots should front on the water, because by the government plat they were shown to abut on it, that in that direction the lots should have but one boundary, the lake itself, and that the "meander line" should not be considered a boundary line. The field notes of the government surveyor, from which the official plat was made, indicated the existence of a lake of about 1,800 acres, whereas in fact the lake is, and was when the supposed survey was made, a body of water not over 800 acres in area; between the actual lake and its "meander line," as shown on the plat, there were, and are, 1,000 acres of high land—never a part of the lake—"timbered with trees of more than a century's growth." The court held that the boundaries of fractional lots should not be indefinitely extended, where they appear by the government plat to abut on a body of water which in fact has never existed at substantially the place indicated on the plat, but that in such a case, the meander line must be regarded as the boundary. The judgment for defendants in the court below was affirmed.

This decision and such as *Schlosser* v. *Hemphill* (Iowa 1902), 90 N. W. 842; *McBride* v. *Whitaker* (Nebr. 1902), 90 N. W. 966; *Live Stock Co.* v. *Springer*, 35 Ore. 312, 58 Pac. 102, *Live Stock Co.* v. *Springer*, 185 U. S. 47, indicate that litigation involving the question as to how far the meander line should be taken as a boundary, is not likely to cease soon, in spite of the well recognized general rule that it shall not be so taken (*Railroad* v. *Schumeier*, 7 Wall. 272; *Hardin* v. *Jordan*, 140 U. S. 371), for not only is it evident that many government surveyors have been grossly negligent, but it seems impossible to lay down a rule that will determine, for all cases, how near the meander line must approach the body of water supposedly surveyed in order that the general rule may be applied.

Where a meander line is honestly and fairly drawn, after an actual, and not a fictitious, survey, the plat will represent, with substantial accuracy, the contour of the body of water, and the true quantity of the upland between the meander line and the water line will, on the whole, approximately appear. The settled general rule that the water line, and not the meander line, shall be taken as the boundary, is therefore reasonable. *Sizor* v. *Logansport*, 151 Ind., 626, 44 L. R. A. 814; *Albany Bridge Co.* v. *The People*, 187 Ill., 199.

The application of this rule, it is true, produces, in particular cases, somewhat peculiar results; as, for example, where a small fractional lot of 4½

acres, was held to include an unsurveyed point running beyond the meander line into a lake, and containing 25 acres, *Mitchell* v. *Smale*, 140 U. S. 406; but, on the whole, its application has resulted in giving, what was evidently contemplated, a water frontage simply.

Where, however, the surveyor has merely drawn on his imagination, and has thus found a lake more than twice its actual size, as was apparently done in the principal case, *Security Land & Exploration Co.* v. *Burns*, *supra;* or has found a lake in front of certain fractional lots, where in fact there was none, *Live Stock Co.* v. *Springer*, *supra;* or has imagined that a temporary body of water is a permanent lake proper to be meandered, *Schlosser* v. *Hemphill*, *supra;* the general rule cannot be applied, and in such cases the pretended meander line must be taken as the boundary line. But, while these seem clear cases of gross error, almost fraud, on the part of the government surveyors, the decisions in general still seem to give no definite answer to the question, how near the actual water line must the meander line approach in order that the general rule, rather than its exception as illustrated by these decisions, shall apply?

Of course, where there are no such errors, and it clearly appears to have been the intention, when the survey, maps and patents are compared, not to convey the government's title beyond the meander line, the latter should be taken as the boundary; as where over 4,000 acres lay between the meandered line and the open waters of Lake Erie, and the survey stopped at the border of this area, which the surveyor called "impassable marsh and water." *Niles* v. *Cedar Point Club*, 54 U. S. App. 668, 85 Fed. R. 45, 175 U. S. 300.

LARCENY—ANIMALS FERÆ NATURÆ—FISH IN NET. — The somewhat unusual question, when animals *feræ naturæ* become the subject of larceny, was involved in the recent case of *State* v. *Shaw* (1902), — Ohio St. —, 65 N. E. Rep. 875. The defendant was indicted for the larceny of fish "of the personal property of" certain persons. The latter were fishermen, and had set pound nets in Lake Erie, and the larceny alleged consisted of going to these nets, lifting them, and taking the fish confined therein. It appeared that each of these pound nets consisted of a net, or pot, about twenty-eight feet square, sunk into the water with its sides extending about four feet above the surface; the net or pot had an entrance in the shape of a tunnel, about two feet ten inches in diameter, and extending into the net or pot five or six feet; from the outer opening of this tunnel, a long arm or wing of net extended in such form as naturally to turn the fish approaching it toward and in the direction of the tunnel; passing through this tunnel the fish came into the pound net or pot; the tunnel is always open, so that a fish which has come into the pot can escape by the same passage through which it came if it can only find the opening, but in fact, by reason of its extension into the interior of the pot, very few fish find the opening and escape. In stormy weather fish sometimes escape over the top. The trial court directed a verdict for defendant, to which the state excepted, and the exceptions were sustained by the supreme court.

Said the supreme court, *per* DAVIS, J.: "Fish are *feræ naturæ;* yet 'where the animals or other creatures are not domestic, but are *feræ naturæ*, larceny